

REMARKS

Applicants present the following remarks in the order that issues were raised in the Office Action.

1. Election of Claims

Claims 1-3 were elected to be examined in the '287 application.

2. Claim Rejections under 35 U.S.C. § 112 ¶ 1

Claim 2 is rejected under 35 U.S.C. § 112 ¶1. Applicants respectfully traverse.

The Office Action states that "modifications of the peptides recited in claim 2 would have significant influences on the function of the variant. As such the structure of the molecule having biologically equivalent function cannot be envisioned or predicted." (Office Action p. 6.)

Claim 2 has been amended to further the prosecution of this application towards allowance. Amended claim 2 does not claim equivalents.

3. Claim Rejections under 35 U.S.C. § 102.

Claims 1-3 are rejected under 35 U.S.C. § 102(b) as anticipated by Lipton *et al.* (WO00/56353) ("Lipton"). According to the Office Action: "At page 7 of Lipton *et al.*, a liquid based carrier is taught, specifically as a cream, gel, spray, or foam, which reads upon Applicant's recitation of a shampoo or cream." (Office Action, p. 6.) Applicants respectfully traverse.

According to the MPEP: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (MPEP § 2131, quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).) Moreover: "The identical invention must be shown in as complete detail as is contained in the claim." (MPEP § 2131,

quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).) With respect to these rules regarding anticipation, the instant invention is not anticipated for at least three reasons: Applicants do not recite a carrier that is a "cream, gel, spray, or foam;" Lipton does not disclose "each and every element as set forth in the claim;" and, a cream is not a shampoo and a shampoo is not a cream.

First, Applicants do not recite a "liquid based carrier" that is a cream, gel, spray or foam in claims 1-3 either "expressly or inherently." What is recited is a shampoo. Contrary to the suggestion in the Office Action that Applicants recite a "shampoo or cream" in claims 1-3, only a shampoo is recited, and that shampoo may, according to claim 3, be a solid or a liquid cream. This recitation of a shampoo is not found in Lipton. A shampoo and a cream, are not "identical" and would not result in an "identical invention."

Second, Lipton does not disclose a shampoo or any compound that could be considered "identical" or even similar to a shampoo. As disclosed in the '287 application specification: "By far, the common cleansing agent used in the treatment of animals is a shampoo." (Specification [0082].) Thus, Applicants disclose and claim shampoo to be a cleansing agent. The cream, spray, foam or gel of Lipton are not shampoos nor do they exhibit any property as cleansing agents. Nowhere in Lipton is this type of property suggested for the disclosed cream, spray, foam or gel. In and of themselves, the cream, spray foam or gel of Lipton are not cleansing agents as are all shampoos. Thus, they are distinct entities with distinct functions, and therefore, are not identical.

Third, given their ordinary and customary meaning, cream, spray, gel, foam and shampoo are understood to mean different things and differing properties. According to

Webster's New Universal Unabridged Dictionary ("Webster's"), a cream is defined as: "a cosmetic or emulsion with a creamy consistency." (Webster's page 427.) On the other hand, a shampoo is defined as: "a preparation, as of soap, used for shampooing." (Webster's page 1667.) This description of a shampoo as a soap is consistent with the '287 application's use of the term as a cleansing agent and is distinct from descriptions of creams, gels, foams, and sprays in ordinary usage and in Lipton. Further, Webster's defines Foam as: Froth; spume; the substance which is formed on the surface of a liquid by fermentation or by violent shaking. (Webster's page 710.) Moreover, a gel is defined as: A jellylike substance formed by a colloidal solution in its solid phase: opposed to *sol*. (Webster's page 760.) Further, a spray is defined as: a jet of fine liquid particles, as from an atomizer or spray gun. (Webster's page 1758.) No mention of the property of cleansing is attributed to cream, gel, foam or spray.

In medical terminology, sprays, foams, creams or gels are not described as cleansing agents. For example, Steadman's Medical Dictionary ("Steadman's") defines cream as: "a semisolid emulsion of either the oil in water or the water in oil type, ordinarily intended for topical use." (Steadman's page 367.) A gel is defined in Steadman's as: "Gelatum: a jelly, or the solid or semisolid phase of a colloidal solution." (Steadman's page 638.) A spray is defined in Steadman's as: "a jet of liquid in fine drops coarser than a vapor; it is produced by forcing the liquid from the minute opening of an atomizer mixed with air." (Steadman's page 1459.) A foam is defined as: "masses of small bubbles on the surface of a liquid." (Steadman's page 600.)

Pharmacological preparation textbooks such as Remington's Pharmaceutical Sciences ("Remington's") also separate shampoo from creams, sprays, gels and foams. For example, cream is defined as: "Creams are viscous liquid or semisolid

emulsions of either the o/w or w/o type. (Remington's page 1613.) Gels are given a curious definition that suggests many things but definitely does not suggest a soap or cleansing agent, to wit: "Pharmaceutical terminology is, at best, confusing and no two authors will classify gels, jellies, magmas, milks and mixtures in the same way. The NF described gels as a special class of pharmaceutical preparations but considered jellies under the same heading. (Remington's page 1539.) Shampoos, on the other hand, are: "liquid soaps or detergents used to clean the hair and scalp. (Remington's page 769.)

It is plain that shampoo is not "identical" to cream, spray, foam or gel. Creams, gels, sprays or foams only suggest consistency and not that which gives shampoo its defining property; that is, as a cleansing agent.

Moreover, with respect to the invention herein, it is necessary to use a shampoo for many animal applications due to the natural thick furs and coats associated with animals.

It is respectfully requested that this rejection be removed.

Conclusion

In view of the foregoing, it is submitted that the claims are in condition for allowance, and a Notice of Allowance is requested.

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